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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,987	02/06/2001	Michael Spencer	102636.58039US	3216
23911	7590	02/08/2008	EXAMINER	
CROWELL & MORING LLP			BORLINGHAUS, JASON M	
INTELLECTUAL PROPERTY GROUP				
P.O. BOX 14300			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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January 14, 2008

Crowell & Moring LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044

FEB 07 2008

TECHNOLOGY CENTER 3600

In re Application of:
Michael SPENCER
Application No. 09/777,987
Filed: February 6, 2001

: DECISION ON PETITION
: REGARDING REQUEST TO
: WITHDRAW FINALITY
: UNDER 37 CFR 1.181

This is in response to the petition filed on December 1, 2006 under 37 CFR 1.181 requesting the withdrawal of the finality of the Office action mailed November 16, 2006 as being premature.

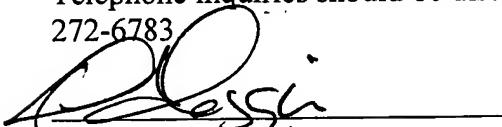
Applicant alleges that the Final rejection mailed November 16, 2006 was premature in accordance with the guidelines of MPEP 706.07(a) in that "the new grounds of rejection in the Office Action issued on November 16, 2006, was not necessitated by Applicants' amendment and was not based on information submitted in an Information Disclosure Statement." Applicant points out that "the Office Action issued on November 16, 2006, rejects claim 1 under 35 U.S.C. 112, second paragraph for indefiniteness. Specifically, the Office Action states that the recitation of the phrase 'where possible' renders claim 1 indefinite." Applicant further alleges that, "because the phrase 'where possible' was part of claim 1 as filed, the rejection of claim 1 for reciting this phrase was not necessitated by the Applicants' amendment of the claims."

A review of the record reveals that since the filing of the petition, an interview was held between the Applicant and the Examiner (see Interview Summary dated January 16, 2007) and agreement was reached that the Final rejection was improper. Further, the Finality of the Office Action was withdrawn and a new Non-Final Action was mailed February 7, 2007.

Therefore since the finality of the Office action mailed November 16, 2006 has already been withdrawn, Applicant's arguments as to the premature finality are considered moot.

The petition is **DISMISSED as moot.**

Telephone inquiries should be directed to James Kramer, Supervisory Patent Examiner, at (571) 272-6783


Wynn Coggins, Director
Patent Technology Center 3600
(571) 272-5350

Jk/snm: 1/14/08

